

It is believed that the first publication of the Stamps reference may not have occurred until after the present application was filed at the U.S. Patent and Trademark Office. If this is accurate, then the Stamps reference is not prior art with respect to the present application. Supporting this belief is another article that was downloaded from a *Chicago Tribune* website, and submitted to the Examiner with the response to the prior Office Action. This second article indicates on its face that it is an Associated Press wire service story that was published on July 17, 2002, eleven months after the filing date of the application. The *Chicago Tribune* story states "Americans will be able to print out sheets of postage stamps on their personal computers, using a system approved today by the Postal Service." The story describes the new system, indicating Stamps.com, based in Santa Monica, California, "is the first company approved to offer the service, called NetStamps."

Based on the *Chicago Tribune* article, it appears that the NetStamps service may not have been offered to the public until eleven months after the filing date of the present application. It is highly unlikely, therefore, that the undated "Quick Reference Guide," explaining how to use the NetStamps service, would have been published on the Internet prior to the filing date of the present application. If the "Quick Reference Guide" was not published until after the filing date of the instant application, then it cannot be properly used in rejecting any claims of the present application.

In any event, the burden is on the Examiner, not the applicant, to establish a publication date for a publication that the Examiner uses in a rejection. The *MPEP* states, in MPEP §2128, that undated web information cannot be used as a reference without a posting date:

Date of Availability

Prior art disclosures on the Internet or on an on-line database are considered to be publicly available as of the date the item was publicly posted. If the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 USC 102(a) or

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(b), although it may be relied upon to provide evidence regarding the state of the art. Examiners may ask the Scientific and Technical Information Center to find the earliest date of publication. See MPEP § 901.06(a), paragraph IV. G.

The Stamps reference does not bear a posting date. As far as applicant is aware, the Examiner has not taken advantage of the resources of the Scientific and Technical Information Center to find the earliest date of publication. The Examiner is encouraged to do so, however, should he believe that this would be helpful.

It is important to remember that the Examiner bears the burden of presenting a prima facie showing of unpatentability. See, *In re Kollar*, 62 USPQ2d 1425 (Fed. Cir. 2002), holding that the USPTO bears the initial burden of demonstrating that the preponderance of the evidence establishes, prima facie, facts supporting the conclusion that the claimed invention was on sale within the meaning of § 102(b); *In re Brigance*, 792 F.2d 1103, 1107, 229 USPQ 988, 990 (Fed. Cir. 1986). See also *In re Alton*, 37 USPQ2d 1578 (Fed. Cir. 1996), discussed discussing the examiner's burden of proof to show a prima facie case of noncompliance with written description requirement. To the same effect is *In re Oetiker*, 24 USPQ2d 1443 (Fed.Cir. 1992) with respect to obviousness based on printed publications. The Examiner has not met this burden.


The accompanying affidavit of the undersigned specifies the facts and circumstances known to the affiant with regard to the Stamps reference. As will be noted, we are unaware of the publication date of the Stamps reference. The Stamps reference was cited in a Supplemental IDS in an effort to provide the Examiner with complete disclosure of information known to applicant. Applicant does not have any additional information regarding its date of publication. Further, applicant believes, based on the other noted Associated Press article, that the Stamps reference may well have been published long after the filing date of the instant application.

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In view of the above, and further in view of the accompanying affidavit, it is submitted that the final rejection of the claims cannot be maintained. Since this rejection is the only rejection currently lodged against the claims, it is submitted that the present application is in condition for allowance.

If the Examiner has any questions or comments regarding the present application, he is encouraged to contact the undersigned at the telephone number indicated below.

Respectfully submitted,
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